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July 8, 2004

## **VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Meeting in WC 04-36 and RM-10865**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Federal Communications Commission's ("FCC") Rules, this letter serves to provide notice in the above-captioned proceedings of *ex parte* meetings with certain FCC staff. On July 7, 2004, the undersigned accompanied Mr. Ravi Sakaria, President and CEO of VoicePulse Inc. ("VoicePulse"), to meet with the following people: Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin, Jessica Rosenworcel, Legal Advisor to Commissioner Copps, Scott Bergmann, Legal Advisor to Commissioner Adelstein, Christopher Libertelli, Senior Legal Advisor to Chairman Powell, Donald "Cory" Jackson, Summer Intern, Matthew Brill, Legal Advisor to Commissioner Abernathy, Jeffrey Harris, Summer Intern and certain members of the Internet Policy Working Group, specifically, Margaret Dailey, Terri Natoli, Thomas Navin, and Julie Veach

VoicePulse is a small company that currently consists of eight employees based in Jamesburg, New Jersey. The Company was the second company in the United States to offer residential and small-business Voice over Internet Protocol ("VoIP") services. During the course of the meetings with the FCC staff identified above, VoicePulse distributed the written material submitted with this filing and discussed issues that are summarized in this letter.

VoicePulse is a unique player in the VoIP marketplace as the Company developed its own softswitch. Accordingly, VoicePulse offers many unique features. For example, VoicePulse customers can use "filters" to block calls from certain numbers, to route certain calls

to another number, to allow certain calls through even if others are blocked, as well as many other iterations. Another feature, termed "Multi-ring," allows VoicePulse customers to have incoming calls ring at multiple phone numbers. For example, the Multi-ring service would allow a VoicePulse customer to have their home, office and cellular phones ring simultaneously. One exciting new feature that will be deployed soon will allow users, using a VoicePulse software client, to remotely control their desktop computers from *any* phone using the text-to-speech capabilities that are built into the MS Windows™ operating system. VoicePulse customers will be able to remotely access data contained in various applications through the use of audible commands transmitted to their desktop computers.

VoicePulse highlighted the fact that approximately 10% of the calls made using VoicePulse's service are made to other VoicePulse users. VoicePulse does not charge for calls made between two VoicePulse customers and these calls do not intersect with the public switched telephone network. This percentage has remained consistent as the Company has grown over the last 14 months.

VoicePulse emphasized to FCC staff that it is critical for the agency to resolve expeditiously the jurisdictional issues surrounding VoIP services. Although VoicePulse maintains that VoIP services like those offered by the Company are jurisdictionally interstate and not subject to state common carrier regulation, such a finding would have *no* impact on general state consumer protection statutes that, *inter alia*, ensure that companies enforce truth-in-advertising laws and also provide important mechanisms for customers to resolve billing disputes.

VoIP services, like those offered by VoicePulse, are transmitted using Internet protocol packets that do not contain any geographical information. Unlike traditional wireline telephony services, the actual physical location of the VoicePulse customer is unknown. Further, VoicePulse's service is inherently portable. VoicePulse customers can travel with their specialized customer premises equipment and utilize it from any location where they have a broadband Internet connection. Additionally, the VoicePulse product allows for use *via* software greatly enhancing the portable nature of the Company's service.

State jurisdiction is inapposite to VoicePulse's service because the Internet recognizes no jurisdictional boundaries. If a state were to exercise jurisdiction over VoicePulse's service, the Company would have to change its practices for all of its customers since VoicePulse has no means for establishing the location of its customers. Further, if numerous states subjected VoicePulse to regulation, conflicting regulatory requirements would place the Company in jeopardy of both enforcement and forfeiture orders as there would be no way for the Company to comply because VoicePulse cannot jurisdictionally separate its traffic.

In light of the important differences between VoicePulse's VoIP service and traditional wireline telecommunications services, the Company questions the wisdom of superimposing

legacy regulations developed based on a technology and marketplace that bears no resemblance to VoIP services and the VoIP market sector. Legacy, common carrier regulation arose in the context of a wireline marketplace dominated by a few firms that possess market power over “bottleneck” facilities. The marketplace for VoIP services is extremely competitive and VoicePulse customers subscribe to a facility provided by a third party. As such, VoicePulse customers are free to switch service providers without relying on VoicePulse to cooperate with their new service provider, nor do they risk disconnection as the broadband Internet connection to which they subscribe is completely independent from VoicePulse’s service. One of the truly exciting aspects of VoIP technology is that a company with only eight employees can allow customers to utilize area codes in 28 states that encompass more than 2,000 cities. Subjecting VoicePulse to state regulatory burdens may mean that small players in the VoIP industry cannot continue to operate.

VoicePulse addressed a number of social policy issues during the course of the meetings as well. VoicePulse purchases telecommunications services as an end user. As such, VoicePulse indirectly contributes to the Universal Service Fund (“USF”). VoicePulse does not object to direct contributions so long as the ultimate methodology applies uniformly to all providers of communications services. One mechanism for USF contribution that the Company supports is a USF contribution assessed on the basis of assigned telephone numbers.

The Company also discussed law enforcement concerns relating to the Communications Assistance for Law Enforcement Act (“CALEA”). VoicePulse emphasized that it has complied with every subpoena received in a timely manner. Further, VoicePulse fully supports the underlying goal of national security that lies at the core of CALEA. The Company can provide law enforcement with all the data and information it needs from VoicePulse customers, including dialed digit extraction and other information that has proved elusive for traditional telecommunications carriers to provide; however, the format of the data that law enforcement requires places undue burdens on VoicePulse as well as other providers. The Company also advocates that CALEA obligations apply to the underlying provider of communications facilities since such a requirement would be the best means of ensuring that law enforcement has access to all the data that traverses networks, including peer-to-peer communications.

Secretary Dortch  
July 8, 2004  
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Pursuant the Commission's Rules, this letter is being submitted electronically to the Secretary for filing in the above-referenced proceedings.

Sincerely,

/s/  
Ronald W. Del Sesto, Jr.

Attorney for VoicePulse Inc.

Encl.

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